

MARY E. JACKSON,

VS.

Defendant.

ORDER

On October 22, 2005, Plaintiff filed her Complaint pursuant to 42 U.S.C. § 405(g), appealing the decision of the Commissioner of Social Security in which the Commissioner found that Plaintiff was not entitled to disability insurance benefits under the provisions of the Social Security Act, as amended. On February 9, 2004, Plaintiff filed a Motion for Summary Judgment. Subsequently, on March 11, 2004, Defendant filed a Motion for Summary Judgment. In an Order dated October 12, 2005, the Court denied Defendant's Motion for Summary Judgment, reversed the decision of the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), and remanded this case to the Administrative Law Judge for further proceedings. Final

judgment was entered by the Court on October 13, 2005.

Plaintiff now asks the Court, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), to award attorney's fees and costs incurred as a result of this litigation. In support of her Motion, among other things Plaintiff attaches an "Application for Fees and Other Expenses Under the Equal Access to Justice Act," time summary sheets, a "Bill of Costs," and a Declaration of George L. Fitzgerald, counsel for Plaintiff. In his Declaration, Mr. Fitzgerald advises the Court that the time reflected on the summary sheets reflects the services rendered to Plaintiff in connection with this case. Plaintiff's attorney asks to be reimbursed at a rate of \$125 per hour for the 18.08 hours spent on this matter, as well as \$150 for the filing fee, for a total of \$2,410. In the alternative, Plaintiff's attorney asks the Court to take into consideration inflation and scarcity of counsel in the field of social security representation and increase his rate to \$148 per hour, for a total of \$2,825.84.

In response, Defendant does not oppose Plaintiff's petition in the amount of \$2,467.92 for attorney's fees and \$150 in costs, provided that this is the only petition filed by Plaintiff in this matter under 28 U.S.C. § 2412(d).¹

The Equal Access to Justice Act provides that the amount of fees awarded must be based upon prevailing market rates for the kind and quality of services furnished, except that "attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). Here, the Court

¹The Court presumes from Defendant's Response that Defendant proposes to reimburse Plaintiff's attorney's fees at the rate of \$136.50 per hour.

finds that an increase in the cost of living and the specialized nature of the proceedings justifies increasing Plaintiff's attorney's fees above \$125 per hour. Moreover, the Court concludes that \$136.50 per hour sufficiently takes into consideration the increased cost of living and specialized nature of the proceedings.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Attorney's Fees is hereby **GRANTED**.

IT IS FURTHER ORDERED that counsel for Plaintiff shall be paid the sum of \$2,467.92 for his fees and \$150 for the cost of the filing fee, for a total amount of \$2,617.92.

IT IS FURTHER ORDERED that Plaintiff may not file another petition in this matter under 28 U.S.C. § 2412(d).

The Clerk is directed to send copies of this Order to counsel for Plaintiff and to the United States Attorney.

Signed: December 9, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the text.

Richard L. Voorhees
United States District Judge



